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OFFICE OF PETITIONS

KENYON & KENYON LLP
ONE BROADWAY
NEW YORK NY 10004

In re Application of	:	
Harald Michi et al.	:	
Application No. 10/507,276	:	DECISION ON PETITION UNDER
Filed: March 10, 2005	:	37 C.F.R. § 1.181(A)
Attorney Docket Number:	:	
10191/3951	:	
Title: CRUISE CONTROL SYSTEM	:	
HAVING A STOP & GO FUNCTION	:	

This is a decision on the petition under 37 CFR § 1.181(a),
filed May 1, 2007, to withdraw the holding of abandonment.

The petition under 37 C.F.R. § 1.181 is **DISMISSED**.

Background

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R §1.113 in a timely manner to the final Office action mailed August 14, 2006, which set a shortened statutory period for reply of three months. An after-final amendment was received on January 22, 2007, along with a three-month extension of time, and an advisory action was mailed on February 28, 2007. No further extensions of time under the provisions of 37 C.F.R §1.136(a) were available, and no further responses were received. Accordingly, the above-identified application became abandoned on February 15, 2007. A notice of abandonment was mailed on March 22, 2007.

Analysis

With the present petition, Petitioner has asserted that a response was submitted on January 16, 2007, together with a two-month extension of time¹, and as such, the indication that the present application went abandoned for failure to provide a timely and proper reply to the final Office action was erroneous.

However, as indicated above, the response that was received on January 22, 2007 was timely filed, but it was not a proper response; it failed to place the application in condition for allowance^{2, 3}.

It follows that since a proper reply was not submitted prior to the maximum extendable period of time, the application went abandoned by operation of law, pursuant to Rule § 1.135(a)⁴.

As set forth in Rule § 1.135(b),

Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment (emphasis added).

The notice of abandonment correctly asserted that the present application was held to be abandoned, due to "Applicant's failure to timely file a proper (emphasis added) reply to the Office letter mailed on 14 August 2006."

Conclusion

Any renewed petition under 37 C.F.R. § 1.181(a) must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted.

1 This appears to be a typographical error, as it is a three-month extension of time that was submitted.

2 See the advisory action of February 28, 2007 (a courtesy copy of this mailing has been included with this decision).

3 See also MPEP § 706.07(f) for a discussion on after-final practice.

4 "If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise."

The renewed petition should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.181(a)," and should only address the deficiencies noted in this decision.

Alternatively, Petitioner may wish to consider filing a petition under 37 C.F.R. §§ 1.137(a) or (b). No assurance can be made that any remedy will be forthcoming.

Any response should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail⁵, hand-delivery⁶, or facsimile⁷.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

Encl. Courtesy copy of the Advisory Action of February 28, 2007.

⁵ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

⁶ Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

⁷ (571) 273-8300- please note this is a central facsimile number.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,276	03/10/2005	Harald Michi	10191/3951	3860
<div>26646 7590 02/28/2007</div> <div>KENYON & KENYON LLP</div> <div>ONE BROADWAY</div> <div>NEW YORK, NY 10004</div>				
<div>EXAMINER</div> <div>MANCHO, RONNIE M</div>				
<div>ART UNIT PAPER NUMBER</div> <div>3663</div>				
<div>MAIL DATE DELIVERY MODE</div> <div>02/28/2007 PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

Courtesy
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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/507,276

Applicant(s)

MICHI ET AL.

Examiner

Ronnie Mancho

Art Unit

3663

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Carlsy Copy
JACK KEITH
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments drawn to the 112 issues are moot. The 112 rejections are withdrawn. Applicant's argument drawn to MPEP 2114 issues are not convincing because the examiner did not ignore any limitation in the claims. The controller in the prior art anticipates the limitations contrary to applicant's argument that the examiner does not cite where the controller is disclosed. The examiner had cited fig. 1 which clearly discloses a stop-and-go controller. In the prior art, the controller (columns 3-5, etc) determines when the vehicle makes a turn during stop-and-go conditions for example. It determines a target angle relative to another vehicle, it further determines yaw similar to applicant's invention. The applicant's specification, on page 3 discloses that it is well known in the art to determine turn by the various methods in the prior art. It is further noted that the prior art, Joyce et al disclose the vehicle turning in fig. 3 and further discloses a GPS system known for detecting azimuth and turn angles of the vehicle. The prior art further anticipates applicant's structure and is capable of being programmed to perform the intended use limitations in applicant's invention. Applicant has not argued that the prior art controller cannot be programmed to perform the method limitations in applicant's claims as allowed by MPEP 2114.

Applicant's arguments

are drawn to method limitations within an apparatus claim. To overcome the rejection, the applicant will need to structurally define his apparatus over the prior art.

The final rejection is proper and thus stand.

2/23/07

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